

# **GOVERNOR'S OFFICE**

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Office of State Planning and Budgeting

## **FY 2008-09 Executive Department Figure Setting Comebacks Packet III**

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**Summary of FY 2008-09 Figure Setting Comebacks, Packet III**

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**Office of State Planning and Budgeting  
Comeback Requests**

Department:	Governor's Office
OSPB Comeback Priority Number:	1
Original Department Priority Number:	1 of 1
Change Request Title:	Creation of the Office of Homeland Security

**SELECT ONE:**

- ☐ Decision Item FY 08-09  
☐ Base Reduction Item FY 08-09  
☐ Supplemental Request FY 07-08  
☒ Budget Request Amendment FY 08-09

	<b>FY 2007-08 Appropriation</b>	<b>Request</b>	<b>JBC Action</b>	<b>Comeback Request</b>	<b>Difference between Action and Comeback Request</b>
Total Request	\$0	\$0	\$0	\$0	\$0
<b>FTE</b>	0.0	7.0	0.0	7.0	7.0
Governor's Office - Office of Homeland Security (3 New Line Items)	\$0	\$19,765,731	\$0	\$19,765,731	\$19,765,731
<b>FTE</b>	0.0	10.0	0.0	10.0	10.0
<b>GF</b>	\$0	\$0	\$0	\$0	\$0
<b>CF</b>	\$0	\$0	\$0	\$0	\$0
<b>RF/CFE</b>	\$0	\$0	\$0	\$0	\$0
<b>FF</b>	\$0	\$19,765,731	\$0	\$19,765,731	\$19,765,731
Department of Local Affairs – <i>multiple lines</i>	\$39,682,405	(\$19,765,731)	\$0	(\$19,765,731)	(\$19,765,731)
<b>FTE</b>	28.2	(3.0)	0.0	(3.0)	(3.0)
<b>GF</b>	\$1,198,413	\$0	\$0	\$0	\$0
<b>CF</b>	\$155,683	\$0	\$0	\$0	\$0
<b>RF/CFE</b>	\$317,240	\$0	\$0	\$0	\$0
<b>FF</b>	\$38,011,069	(\$19,765,731)	\$0	(\$19,765,731)	(\$19,765,731)

**Summary of Initial Request:**

The Governor's Office submitted a budget amendment to consolidate the administration of the Homeland Security grants in the newly created Office of Homeland Security (Office). The request specifically included a transfer of federal funds and 3.0 FTE from the Department of Local Affairs to the newly created Office and a request for 7.0 additional FTE for current contracted positions or required positions.

The new organization of the Office has been a proven model in other states and is based on an internal review of operations after state and federal audits found the State Homeland Security operation has a lack of focus on state-wide planning, duplicate and fragmented organizational initiatives, inadequate staffing, and ineffective management of the homeland security grant administration.

**Committee Action:**

JBC staff recommendation was to approve the budget amendment to consolidate the functions. JBC staff also recommended further break-out of funding using three line items: Administration Costs, Grants and Training, and Indirect Cost Assessment.

The JBC expressed concerns related to ongoing funding and lack of statutory authority for the existing Homeland Security Office. After consideration, the JBC voted to decline the request to transfer federal funds and consolidate administration of Homeland Security Grants.

**Department Comeback:**

OSPB requests the JBC reconsider its action to not approve the transfer of federal funds and associated FTE. The budget amendment follows the Executive Order D 003 08 which coordinates state and local homeland security initiatives and administer federal grants related to homeland security. The Office will serve as the State Administering Agency for the purpose of receiving and overseeing expenditures of homeland security grants. The specific functions of the Office are:

1. Work with State agencies and the State's nine all hazards regions to develop and implement the State's homeland security strategy;
2. Build partnerships with first responders, agencies and citizens in the public and private sectors;
3. Administer federal grants in compliance with federal, state, and local laws and regulations;
4. Oversee expenditures made by grantees of homeland security grants;
5. Provide technical assistance to grantees of homeland security grants; and
6. Provide oversight for homeland security training and exercise programs.

This comeback narrative is divided as follows: specific issues raised in the Office of Inspector General audit, issues related to the declining federal funds, administrative cost concerns, statutory authority, and request for bottom-line funding.

***Office of the Inspector General Audit***

The Department of Homeland Security, Office of Inspector General issued an Audit of the State of Colorado Homeland Security Grant Program in December 2007. The audit report outlines the following concerns:

- Oversight of homeland security program has not been effective because of a lack of statewide monitoring and control.
- The current organization is ineffective and provides minimal assurance that processes are controlled, collaborative, and transparent.
- Grant management included ineffective internal controls, insufficient trained staff, and efforts to monitor sub-grantees are not effective
- The report questioned approximately \$7.8 million in costs claimed which were not in compliance with grant requirements
- Funding was not always allocated to the high priority projects
- The State has not ensured equipment readiness or effectively implemented exercise and training programs

The passages which follow provide insight into the reasoning behind the specific changes being implemented.

*“A viable homeland security strategy provides a blue print for comprehensive, enterprise-wide planning for homeland security efforts; and strategic direction for enhancing the state’s capability and capacity to prevent, prepare for and respond to major all-hazards events, including terrorist attacks.”* OIG audit, page 7.

Consolidating the Office of Homeland Security in the Governor’s Office will elevate the overall strategic mission, planning, and monitoring functions. By consolidating the planning and management functions, the Office is better able to concentrate on ensuring integration and comprehensive planning.

*“Without strong commitment to providing the leadership and staffing needed to administer its homeland security program, the state may be unable to sustain its stated homeland security intentions or meet the federal guidelines associated with receiving federal homeland security grant funding.”* OIG audit, page 6.

In discussions with federal Department of Homeland Security and through this audit, it is clear that the State must properly and appropriately administer the program to ensure credibility. If bureaucracy and conflicting missions overwhelm the management of this program, the State’s standing and further grant awards may suffer.

***Declining Federal Funds for Homeland Security***

The JBC staff presented information showing that federal funds received for this program have decreased by 55.3% since FY 2003. Staff indicated the State may be required to provide a significant contribution to sustain the program if federal funds continue to decrease.

Whether or not federal funds continue to decrease is not related to this budget amendment. After the attacks on September 11, the federal government dedicated significant time and resources to securing the homeland. This large infusion of resources reached states in FY 2002-03 and it was expected the amount of funds set aside for this purpose would decrease over time. Much of this funding was for one time purchases of equipment and disaster response rather than intended for ongoing operations.

The Homeland Security grant funds are normally available for 2 to 3 years and unspent funds may roll forward from one year to the next. As the funds are available for multiple years, the Office is able to plan accordingly. Colorado is currently using federal FY 2005-06 grant funds to pay personnel and will not begin spending 2007 grant funds until August or September of this year.

The federal homeland security funding is secure until FY 2011-12. The Office does not anticipate any request for State funds.

***Administrative Cost Concerns***

The JBC staff analysis includes information about the change in the administrative cost cap from 5.0% to 3.0% beginning in FY 2008-09. Staff projected the administrative costs would be in excess of the cap and the State resources would likely be required.

The Office's projections include continued utilization of a portion of the allowable planning costs for personnel and operating and have accounted for all of the grants' limitations and guidelines. Staff anticipates that these combined funding sources should be sufficient to cover the operation of the Office and will not submit a request for administration costs.

***Statutory Authority***

The JBC staff advised against funding of governmental entities not in statute. The Committee indicated that the creation of the Office of Homeland Security required legislation.

As indicated above, the budget amendment does not request State funds. After consideration, a statutory change does not appear warranted. This budget amendment does not request a transfer of any statutory division or function. This Office is a coordinating and planning office rather than an operations office. The responsibilities of the Division of Emergency Management, the Office of Preparedness, Security and Fire Safety, and other divisions will remain with their respective departments.

By consolidating the administration of the program, the divisions responsible for day-to-day operations will concentrate on their specific mission. This request is for appropriate FTE and accurate representation in the Long Bill. The Office will serve as the State Administering Agency for these federal funds.

***Request for Bottom-Line Funding***

The JBC staff requested to include the Office of Homeland Security in the Long Bill including three line items: administration costs, grants and training, and indirect assessment. The rationale for this recommendation was budgetary transparency and historical reference.

The Office will work with JBC staff to appropriately present the Office in three line items as recommended by the JBC staff.

In summary and based on the arguments above, OSPB requests the JBC reconsider their action on this amendment to transfer administration costs from DOLA to the Office, approve additional FTE, and present the Office in three line items in the Long Bill.

**Office of State Planning and Budgeting  
Comeback Requests**

Department:	Higher Education
OSPB Comeback Priority Number:	2
Original Department Priority Number:	S-2
Change Request Title:	Auraria Higher Education Auxiliary Revenue

**SELECT ONE:**

- ☐ Decision Item FY 08-09  
☐ Base Reduction Item FY 08-09  
☒ Supplemental Request FY 07-08  
☐ Budget Request Amendment FY 08-09

(9) ) Auraria Higher Education Center - Division Totals	FY 2006-07 Actual	FY 2007-08 Supplemental Request	JBC Action	Comeback Request	Difference between Action and Comeback Request
<b>Total</b>	\$18,079,812	\$5,302,443	\$0	\$825,051	\$825,051
<b>FTE</b>	119.2	0.0	0.0	0.0	0.0
<b>CF</b>	\$18,079,812	\$5,302,443	\$0	\$825,051	\$825,051

(9) Auraria Higher Education Center - Administration	FY 2007-08 Appropriation	FY 2007-08 Supplemental Request	JBC Action	Comeback Request	Difference between Action and Comeback Request
<b>Total</b>	\$14,814,761	\$775,051	\$0	\$775,051	\$775,051
<b>FTE</b>	119.2	0.0	0.0	0.0	0.0
<b>CFE</b>	\$14,814,761	\$775,051	\$0	\$775,051	\$775,051

(9) Auraria Higher Education Center – Auxiliary Revenue	FY 2007-08 Appropriation	FY 2007-08 Supplemental Request	JBC Action	Comeback Request	Difference between Action and Comeback Request
<b>Total</b>	\$3,265,051	\$4,527,392	\$0	\$50,000	\$50,000
<b>FTE</b>	0.0	0.0	0.0	0.0	0.0
<b>CF</b>	\$3,265,051	\$4,527,392	\$0	\$50,000	\$50,000

**Summary of Initial Request:**

The Department of Higher Education submitted a supplemental request on January 2, 2008, for an additional \$5,302,443 cash fund spending authority in FY 2007-08 for the Auraria Higher Education Center. The supplemental request was based on two components including an overexpenditure from FY 2006-07 amounting to \$825,051 in the Auxiliary Revenue line item and additional spending authority for anticipated revenues in the current fiscal year in FY 2007-08 amounting to \$5,477,392 cash funds. The State Controller's Office put a restriction on the Auxiliary Revenue line item for \$50,000 cash funds (its total appropriation) and an additional restriction on the Administration line item for the remaining \$775,051 cash funds in FY 2007-08, (totaling to the Auxiliary Revenues line item's overexpenditure of \$825,051 cash funds in FY 2006-07). The supplemental request also sought corresponding cash fund spending authority in FY 2008-09 for additional anticipated Auxiliary Revenue.

**Committee Action:**

The Committee adopted JBC staff recommendation to deny this request. The JBC staff pointed out that there would be legislation introduced that would eliminate Section 23-1-103.5, C.R.S., which is the provision in statute that requires all TABOR revenues earned by a higher education institution to be appropriated in the Long Bill. This legislation is SB 08-126, short title "Repeal Higher Ed Cash Fund Limit."

**Department Comeback:**

The OSPB requests that the Committee continue to address the supplemental request amount associated with the overexpenditure from FY 2006-07 of \$825,051 cash funds that placed a restriction on the FY 2007-08 Auraria Higher Education Center Division (\$50,000 cash funds in the Auxiliary Revenue line item and \$775,051 in the Administration line item). OSPB and the Department have reviewed SB 08-126 and sought State Controller's Office staff opinions as to if this legislation would address the overexpenditure from FY 2006-07. *The State Controller's Office staff indicates that SB 08-126 does not replace the need for supplemental action to lift the overexpenditure restriction for both line items in the current fiscal year.* Any further action on the Auxiliary Revenue line item will first require the lifting of the restriction (even in the case of this line being eliminated due to legislation).

The OSPB and Department are seeking the removal of the \$825,051 cash fund spending authority restriction through a specific appropriation for the exact amount for the current fiscal year to replace the restricted portion of the current spending authority.

This issue occurs due to the internal service charge between the AHEC and the tenant institutions of the campus for services such as postage, fleet management, security, room rentals, minor remodeling, etc. These charges require cash fund spending authority as these dollars cross the TABOR boundary since the tenant institutions are enterprises and the Auraria Higher Education Center is not. SB 08-126 will eliminate the need for this type of supplemental request with the Auraria Higher Education Center in the future.

**Office of State Planning and Budgeting  
Comeback Requests**

Department:	Higher Education
OSPB Comeback Priority Number:	3
Original Department Priority Number:	# 6
Change Request Title:	Personal Service Funding for Appropriated FTE

**SELECT ONE:**

- ☒ Decision Item FY 08-09  
☐ Base Reduction Item FY 08-09  
☐ Supplemental Request FY 07-08  
☐ Budget Request Amendment FY 08-09

	<b>FY 2007-08 Appropriation</b>	<b>Request</b>	<b>JBC Action</b>	<b>Comeback Request</b>	<b>Difference between Action and Comeback Request</b>
<b>Total, Training Services</b>	\$643,211	\$60,242	\$0	\$60,242	\$60,242
<b>FTE</b>	7.8	0.0	0.0	0.0	0.0
<b>CF</b>	\$572,007	\$60,242	\$0	\$60,242	\$60,242
<b>CFE</b>	\$61,620	\$0	\$0	\$0	\$0
<b>FF</b>	\$9,584	\$0	\$0	\$0	\$0

**Summary of Initial Request:**

The Division of Private Occupational Schools submitted a request to increase cash spending authority in FY 2008-09 by a total of \$60,242 to fund 1.0 FTE already allocated in the Long Bill. This request does not represent new revenue. The increased cash spending authority will help to fund the further enactment of programmatic reforms identified in April 2005 by the Office of the State Auditor ([www.state.co.us/OSA/OSA](http://www.state.co.us/OSA/OSA) Audit Reports), as being needed specifically:

- To strengthen compliance monitoring of approved in-state, out-of state schools, and Internet schools (distance education);
- To establish a proactive enforcement program (monitoring and compliance) of licensing requirements on unlicensed (unapproved/illegal) schools; and
- For the overall purposes of continuing to provide public/consumer protection in the regulation of all private occupational schools operating within the State.

**Committee Action:**

**JBC staff recommended to the Committee no increase in spending authority.** The JBC concerns are: **(1)** the Division has failed to adequately reduce fees to match actual expenditures; **(2)** Division salaries have outpaced the rest of the Department; **(3)** that the Division has no jurisdiction over Internet (distance or online education) schools; and **(4)** the inability of the Division to provide more than a two-year history of performance measures to justify a workload-based increase.

**Department Comeback:**

- (1)** With respect to reducing fees, the Division is entirely cash-funded through statutorily authorized fees which are established by the Board of Private Occupational Schools (“Board”) and paid by the private occupational schools. Division revenue (fees) has generally outpaced expenditures for fiscal years 2003-2007. In September 2005, the Division implemented a procedure whereby the Division Director reviews revenue collected after the third quarter of the fiscal year and makes a determination if a reduction in the collection of student assessment fees is needed in order to maintain the Division’s collection of revenue at or below 110% of the fiscal year’s spending authority. The Division Director has the flexibility of adjusting or in some cases waiving the quarterly assessment fee based on earned and projected revenue. This is in an effort to remain compliant with state fiscal rules not to exceed allowable cash reserves.

In FY 2004-05, the Division collected \$733,772 in revenue, \$108,846 above total expenditures. As a result, the Division refunded \$108,846, or 14.8% of total revenue collected, to the schools. For FY 2005-06, 4<sup>th</sup> quarter assessment fees were waived by the Division and for FY 2006-07, assessment fees were reduced from \$3 per student to \$2 for the first, second and third quarters to remain within the Division’s spending authority and eliminate excess cash reserves. For FY 2007-08, it is likely that the 4<sup>th</sup> quarter assessment fee will be waived for schools to remain compliant with the aforementioned state fiscal rules concerning allowable cash reserves. In July 2006, the Division implemented a new schedule that significantly reduced fees for accredited schools and renewal schools.

**This request does not require increasing fees, in fact, it is very likely that school application fees will decrease with the continuing trend of more new schools (legitimate entities, as well as unlicensed schools) being regulated. Currently, the Division is working with 15 unlicensed entities to become compliant with statutory requirements at Section 12-59-101, et seq, C.R.S. (2007) and FY 2007-08 mid-year report of student assessment indicate an increase in student enrollment of 7.8% from 2007, a trend that will likely continue.**

- (2)** Regarding Division salaries, the 2005 audit was critical of the lack of controls and oversight in compensation. However, the new Division Director and Department of Higher Education Executive Director have set forth appropriate controls in accordance to the State salary survey and compensation is established and awarded based upon the recommended salary survey guidelines. Division staff salaries are commensurate with the level of position and

duties and responsibilities assigned and closely aligned with similar classified job positions of the state personnel system.

- (3) With concern of the Division's jurisdiction to regulate on-line education (Internet schools), the Division is statutorily (Section 12-59-101, et seq, C.R.S. [2007]) charged to regulate all private occupational schools subject to state regulation *regardless* of the method of delivery of education and training. This includes on-line education. The legal mandate of the Division includes the fostering and improvement of private occupational schools and their educational services; and the protection of the public from fraudulent and substandard schools. This legislative declaration does not distinguish schools by modes of educational delivery, including the ever growing and popular on-line schools or Internet schools that deliver the majority of their instruction to students through a website. Approximately 25% of approved in-state private occupational schools elect to offer a portion of their education programs and courses by means of on-line or web/internet based instruction as a method of delivery.

The regulation of web/internet based schools is an issue that affects not only the Division of Private Occupational Schools, but also the Department of Higher Education. Unauthorized operations and "diploma mills" are identified as a growing national consumer concern. Often, leads of unauthorized or illegal internet educational solicitations and "diploma mills" come from other out-of-state regulatory agencies and state regulatory professional associations, as well as competitor schools. More frequent proactive monitor of internet solicitations is of particular importance in order to protect the public. Private occupational schools will likely continue to increase (with 272 school operating in 2003 and 350 in 2007, an average increase of 5.7%), as will the number of students expecting and deserving of protection against deceptive and fraudulent practices. **The State will continue to experience a growth in unauthorized schools and diploma mills, which results not only in unprotected students, but in unfair competition and other illegal trade practices which adversely impact privately owned occupational schools duly operating in compliance with law and the Colorado consumer at large.**

- (4) The Joint Budget Committee FY 2008-09 Staff Figure Setting Recommendation for the Department of Higher Education suggested the Division provide more than two years of data on student complaints and disciplinary actions in order to justify the need for the requested additional cash spending authority. Unfortunately, this is not possible as no such accurate data exists. This unfortunate deficiency was recognized in the Report by the Colorado State Auditor. Prior to the two year period reported to the Joint Budget Committee, there existed no effective nor efficient method for the Department to capture, track or otherwise report accurate work performance measures, in particular in respect to student complaints; complaints of unauthorized schools or otherwise deceptive trade or sales practices. Nor was there an ability to identify, track or report related regulatory compliance and monitoring efforts of such matters. The Legislative Audit Report specifically found this to be a significant deficiency of process and staff accountability citing that there [were]: (1) Inconsistent procedures for handling complaints both at the intake and investigations stages and that "the Complaint Data Base was inconsistent, inaccurate, and is not analyzed to identify trends ...."

The Department/Division took immediate steps to develop and implement what is now a viable, equitable and accountable complaint process, with clear policies and procedures. Simultaneously the Division developed what is now a substantial electronic data base system that not only enables and captures all online filings, but tracks in real time all stages of the investigative/complaint resolution process and more importantly to the issue at hand allows for accurate, complete data collection, tracking and reporting by enumerable variables (i.e. by School, by filing time period, by completing date, completion/resolution status, etc). Through the use of this data base the Department for a two year period and continuing has been and continues to accurately measure workload performance and identify very real, immediate and steady increases not only in student/parent complaint filings, but increased consumer complaints of unauthorized schools, suspected diploma mills and claims of deceptive trade and sales practices state-wide.

The OSPB respectfully requests that Committee action approve and grant this one-time request to increase its spending authority for FY 2008-09 by an additional \$60,242 to hire to hire an already appropriated FTE for the purpose of continuing to provide public/consumer protection in the regulation of all private occupational schools operating within the State.